



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201212023

DEC 27 2011

Uniform Issue List: 402.00-00, 403.05-00

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

EP: RA: T3

Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXX
Employer M	= XXXXXXXXXXXXXXXXXXXX
Plan X	= XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Plan Y	= XXXXXXXXXXXXXXXXXXXX
Financial Advisor B	= XXXXXXXXXXXXXXXXXXXX
Financial Institution R	= XXXXXXXXXXXXXXXXXXXX
Account Y	= XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Amount N	= XXXXXXXXXXXXXXXXXXXX
Amount O	= XXXXXXXXXXXXXXXXXXXX
Amount D	= XXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXX
Date 4	= XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

Page 2 of 4

201212023

Year 1 = XXXXXXXXXXXXXXXXXXXXX

Dear :

This is in response to your request for a letter ruling dated June 3, 2011, as supplemented by correspondence dated October 12, October 20, and October 25, 2011, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of your ruling request.

Taxpayer A, age 41, represents that she received a distribution of Amount N from Plan X and a distribution of Amount O from Plan Y, totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover of Amount D within the 60-day period prescribed by section 402(c)(3)(B) of the Code was due to an error made by Financial Advisor B of Financial Institution R which led to Amount D being placed into a non-IRA account.

Taxpayer A was employed by Employer M. Employer M maintained Plan X and Plan Y in which Taxpayer A participated during her employment with Employer M. Taxpayer A represents that upon retirement from Employer M, she intended to roll over Amount D into a rollover IRA at Financial Institution R.

Taxpayer A represents further that, on Date 1, she relied on Financial Advisor B to assist her in completing the appropriate forms to accomplish a direct rollover. On Date 2, Plan X issued a check payable to Financial Institution R FBO Taxpayer A for Amount N. On Date 3, Plan Y issued a check payable to Financial Institution R FBO Taxpayer A for Amount O. Taxpayer A relied on Financial Advisor B to correctly establish a rollover IRA in which to deposit Amount N and Amount O. Instead Financial Advisor B inadvertently established a non-qualified brokerage account rather than an IRA as Taxpayer A intended. Financial Advisor B did not discover this mistake in time to make a correction before the 60-day expired.

Taxpayer A believed that Financial Advisor B had effected a direct rollover of her Plan X and Plan Y retirement funds and did not learn of the failure until Taxpayer A and her spouse discovered the error while preparing their federal income tax return for Year 1. In a letter dated Date 4, Financial Advisor B stated that his office established a non-qualified brokerage account rather than an IRA as Taxpayer A intended and deposited Amount D into Account Y, a non-IRA account.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount D.

Section 403(b)(8)(B) of the Code provides that the rules of section 402(c)(3) apply to rollovers of amounts distributed from a 403(b) annuity.

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans, including IRAs.

Section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check,

XXXXXXXXXXXXXX

Page 4 of 4

whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted is consistent with your assertion that Taxpayer A's failure to accomplish a timely rollover of Amount D into a rollover IRA was caused by an error committed by Financial Advisor B of Financial Institution R.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met, the contribution of Amount D into a rollover IRA will be considered a valid rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling assumes Plan X and Plan Y satisfied the qualification requirements of section 401(a) and section 403(b) of the Code at all times relevant to this transaction.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact XXXXXXXXXX, ID Number XXXXXXXX, by telephone at XXX XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans, Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose